

**United States Department of Labor  
Employees' Compensation Appeals Board**

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LINDA LINDSEY, Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Long Beach, CA, Employer )

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**Docket No. 04-2208  
Issued: March 22, 2005**

*Appearances:*  
*Linda Lindsey, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On September 8, 2004 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 31, 2004, which denied her claim for an emotional condition in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

**FACTUAL HISTORY**

On January 27, 2004 appellant, then a 48-year-old program support clerk, filed an occupational disease claim alleging that factors of her employment caused stress, headaches and high blood pressure. She alleged that she had too many daily assignments which were overwhelming. She stopped work that day and did not return. In support of her claim, appellant

submitted a report dated March 5, 2004 from Dr. Jean E. Carlin, a Board-certified psychiatrist, who advised that appellant could not work due to “excessive recent stress.” She referred appellant to her primary care physician for her physical complaints.

By letter dated March 15, 2004, the Office informed appellant of the evidence needed to support her claim. In response, appellant submitted two personal statements in which she alleged that her emotional condition was caused “over a period of time due to the acts and behavior exhibited by Dr. Nance and Donna Selsor during 2003-2004, day-after-day, which beat me down physically and emotionally.” She alleged that the “overpowering” number of assignments from two supervisors and twice a day meetings with Dr. Nance and Ms. Selsor for assignments and a February 24, 2004 discussion with Ms. Selsor regarding an additional work assignment caused her condition. Appellant provided a diary of events that occurred from May 22, 2003 to February 24, 2004, which included meetings and discussions with Dr. Nance, Ms. Selsor, union officials in which her job duties and an office relocation were discussed. She advised that the relocation of her office from the resident doctor’s conference room to what had been a storage room, a proposed change in duty hours and a change in her assignments, caused anxiety and stress.<sup>1</sup> She became fearful of interacting one-on-one with Dr. Nance. Appellant noted that on September 16, 2003 she was asked to go through old medical files, and that she had to stand on her feet for two hours to do this. She indicated, however, that this project was cancelled. Appellant stated that when her office was moved on November 19, 2003, she had no computer or telephone, and that she received hostile emails from Dr. Nance. On February 24, 2004 after Ms. Selsor assigned her a number of tasks, she went to see Dr. Onishi, Chief, Geriatrics, Rehabilitation Medicine and Extended Care (GRMEC), and told him that she had been assigned too many duties which she could not perform because she could not concentrate. He told her that, if she was ill, she should go home and a meeting would be set-up with her supervisors and the union. Appellant left work and went to her doctor who found that her blood pressure was elevated.

In reports dated March 18 and 24, 2004, Dr. Carlin diagnosed anxiety and depression resulting from “extreme stress at work.” She stated that appellant needed a clearly defined job description with a work agreement and advised that she could return to part-time work in a less stressful environment. Appellant also submitted copies of emails, handwritten notes, job descriptions and charts. In a December 9, 2003 letter, she requested a desk audit. She also submitted evidence regarding a claim filed in 1990 that was accepted on February 21, 1991 for an acute anxiety reaction with depression.<sup>2</sup> A letter dated March 3, 2004 noted that appellant had filed a claim with the Equal Employment Opportunity (EEO) Commission.

By letter dated April 1, 2004, the employing establishment controverted the claim and submitted evidence regarding appellant’s claim, the office move and meeting ergonomic needs, meetings with appellant, a desk audit, and appellant’s meeting with Dr. Onishi on February 24, 2004. The employing establishment submitted further information regarding the

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<sup>1</sup> Appellant stated that she was asked to call housekeeping to request large bags for shredding and to request that the ladies room be supplied with toilet paper and toilet seat covers.

<sup>2</sup> The claim was adjudicated under Office file number A13-947512. The instant claim was adjudicated under file number 13-2100212.

desk audit, standards for the program support clerk position at GRMEC,<sup>3</sup> a position description, correspondence with appellant, and appellant's notes regarding her job duties. In reports of contact dated October 14 and 21, and November 18, 2003, Dr. Nance, appellant's supervisor and Chief, Rehabilitation Service, GRMEC, documented attempts to schedule meetings and reports of meetings held on October 21 and November 18, 2003 in which her position description and other concerns were discussed. Union officials were present at each meeting. In reports of contact dated November 19, December 1 and 3, 2003, Ms. Selsor discussed appellant's concerns regarding the relocation of her office and work assignments. In an exchange of emails dated February 24 and 25, 2004, Dr. Onishi informed Dr. Nance that appellant came to his office on February 24, 2004 "somewhat distraught" over her assignment of the day, stating that she was too stressed to be able to focus on the assignment. He stated that he would arrange a meeting with appellant, her supervisors and union representation, but advised appellant that if the assignment was within the scope of her job, she should not refuse. She informed him that she needed to leave due to stress. On February 25, 2004 Dr. Onishi stated that he did not inform appellant that she should be out until the meeting was held.

In a statement dated March 31, 2004, Dr. Nance stated that appellant's job duties from late 1999 to 2002 included providing coverage for the outpatient clinic reception area episodically, changing the examination couch fitted sheets, maintaining the medication cabinets and chaperoning female patients. Dr. Nance indicated that appellant's position title was changed to "program support clerk" as part of an EEO settlement and noted that the employee health nurse had provided physical restrictions of no heavy lifting, repeated bending, stooping, pushing or pulling. Dr. Nance described discussions, including the meetings of October 21 and November 17, 2003, that were held with appellant and union personnel in an attempt to improve communication with appellant, discussions held regarding her job duties and her office relocation. She noted appellant's negative response to several requests to perform specific tasks, noting that, when communication with appellant became problematic, daily meetings were held.

In reports dated March 8 and April 9, 2004, Dr. Howard K. Bland, a Board-certified family practitioner, diagnosed severe tension headaches and acute anxiety/stress reaction with a mixed depression component which, he stated was "directly related to [her] work conditions as per [her] history." He advised that she was medically disabled beginning February 24, 2004.

Dr. Carlin continued to submit reports advising that appellant could not return to work until a proper job was found for her, noting that multiple vague assignments, an unclear line of authority and harassment caused appellant's condition. She opined that appellant needed a new job and a new supervisor.

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<sup>3</sup> Element 1 consisted of duties at reception such as answering the telephone, sending and distributing studies, contacting patients via telephone and scheduling patients. Element 2 consisted of data entry duties. Element 3 consisted of clerical/administrative support including distributing mail, maintaining supplies, document filing and shredding, stocking and preparing examining rooms, chaperoning female patients. Element 4, "Service Excellence" outlined that patients and staff were to be treated with courtesy and respect. Element 5, "Confidentiality," was to ensure that confidential information be guarded, and Element 6 noted that the position incorporated the healthcare system's goals and objectives.

In a report of contact dated April 6, 2004, Dr. Nance advised that a meeting was held that day with appellant, employing establishment management and union representatives in which the proposed standards for appellant's position as program support clerk were discussed. Dr. Nance stated that one element was removed<sup>4</sup> and that the duties were otherwise approved by appellant and the union representatives but were prioritized at the union's request. The amended standards were then forwarded to the union.

By decision dated August 31, 2004, the Office denied the claim, finding that appellant failed to establish that she sustained an emotional condition in the performance of duty.

### **LEGAL PRECEDENT**

To establish an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>6</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>7</sup> There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under the Act.<sup>8</sup> When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>9</sup> On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>10</sup>

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<sup>4</sup> Item D was removed from Element 3. This states: "Files EMG reports after completion. Maintains files for a designated period of time; old records will be removed and appropriately destroyed/shredded upon request."

<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

<sup>9</sup> *Lillian Cutler*, *supra* note 6.

<sup>10</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

In emotional condition claims, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>11</sup>

As a general rule, an employee's emotional reaction to administrative or personnel actions taken by the employing establishment is not covered because such matters pertain to procedures and requirements of the employer and are not directly related to the work required of the employee.<sup>12</sup> An administrative or personnel matter will be considered to be an employment factor, however, where the evidence discloses error or abuse on the part of the employing establishment.<sup>13</sup> An employee's frustration from not being permitted to work in a particular environment or to hold a particular position is not compensable.<sup>14</sup> Similarly, an employee's dissatisfaction with perceived poor management is not compensable under the Act.<sup>15</sup>

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. Rather, the issue is whether the claimant under the Act has submitted sufficient evidence to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>16</sup>

### ANALYSIS

Appellant alleged that employment incidents and assignments that were overwhelming and harassing and caused stress-related conditions. A number of the incidents identified by appellant fall into the realm of administrative or personnel matters, and absent error or abuse, such factors do not arise with the performance of duty.<sup>17</sup> Appellant stated that the manner in which she was assigned job duties at daily meetings caused her condition. A supervisor's instructions including the assignment of work and the monitoring of activities of work, however,

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<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Felix Flecha*, 52 ECAB 268 (2001).

<sup>13</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>14</sup> *Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>15</sup> *Id.*

<sup>16</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>17</sup> *Id.*

are an administrative function of the employer.<sup>18</sup> An employee's complaints concerning the manner in which a supervisor performs his or her duties as a supervisor or the manner in which a supervisor exercises his or her supervisory discretion fall, as a rule, outside the scope of coverage of the Act. This principle recognizes that a supervisor or manager, in general, must be allowed to perform their duties that employees will at times dislike the actions taken.<sup>19</sup> The Board has held that mere disagreement or dislike of a supervisory or management action will not be compensable without a showing through supporting evidence that the incidents or actions complained of were unreasonable.<sup>20</sup> The record in this case is replete with evidence that meetings were scheduled and held with appellant, employing establishment management and union officials regarding appellant's job duties, and the employing establishment further explained that meetings were held to improve communication with appellant regarding her job duties.

Appellant referenced her position classification. Such classification and preparation of position descriptions are also considered administrative functions of the employing establishment.<sup>21</sup> In this case, appellant did not provide any substantiation to show that the job assignments or meetings or her position classification constituted error or abuse. Rather, these show appellant's frustration at not being permitted to hold a particular position, and are those not compensable.<sup>22</sup>

Appellant alleged that her condition was caused because her office was moved from the resident physician's conference room to a more remote location. Dr. Nance explained that the conference room was intended for the resident physician's use. An employee's frustration from not being permitted to work in a particular environment is not compensable under the Act.<sup>23</sup> The Board thus finds that appellant's reaction to the move resulted from her frustration in not being permitted to work in a particular environment and is not a compensable factor of employment. Appellant further noted that when her office was relocated she did not promptly have telephone and computer access. The assignment of office equipment, however, is also considered an administrative function of the employing establishment.<sup>24</sup> Appellant also attributed her emotional condition to a proposed shift change. However, as this was only a proposal that was not implemented, it would not be considered a compensable factor of employment.<sup>25</sup>

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<sup>18</sup> *Kim Nguyen*, *supra* note 10.

<sup>19</sup> *Judy L. Kahn*, 53 ECAB 321 (2002).

<sup>20</sup> *Id.*

<sup>21</sup> *Georgia M. McCardle*, 48 ECAB 502 (1997).

<sup>22</sup> *Barbara A. Latham*, *supra* note 14.

<sup>23</sup> *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>24</sup> *Harriet J. Landry*, 47 ECAB 543 (1996).

<sup>25</sup> *Eileen P. Corigliano*, 45 ECAB (1994).

Where a claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>26</sup> Thus, appellant did not establish error or abuse on the part of the employing establishment in regard to these administrative matters and any reaction must be considered self-generated.<sup>27</sup>

Appellant noted that she had filed an EEO claim. In assessing the evidence, the Board has held that grievances and EEO complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.<sup>28</sup> While the record contains some evidence regarding a previous EEO settlement, the document is redacted and contains a finding of no liability on the part of the employing establishment. Appellant has submitted no evidence regarding any new EEO claim that was filed in 2004 or to substantiate that her job position was not in compliance with any EEO ruling. She failed to establish a compensable factor of employment in this regard.

Appellant alleged that she had to perform duties that were outside her physical limitations, and the Board has held that being required to work beyond one's physical limitations may constitute a compensable employment factor if the record substantiates such activity.<sup>29</sup> There is no evidence of record, however, that appellant did, in fact, perform duties outside her physical limitations. Thus the record does not support her allegation that the employing establishment required her to perform duties beyond her physical capabilities.

Appellant generally contended that she was overworked in that her job description contained too many duties. The Board has held that overwork, as substantiated by sufficient factual information to support the claimant's account of events, may be a compensable factor of employment.<sup>30</sup> However, appellant made general allegations that she was assigned too many duties and could not perform them because she could not concentrate. Her allegations lack specificity to establish the factual basis of her claim in this regard.<sup>31</sup> There is insufficient evidence to show that appellant was in fact overworked. Appellant noted that when she perceived a duty as outside her position description or as overwork, she did not perform such duties. Appellant, therefore, did not provide sufficient evidence to establish the alleged overwork.<sup>32</sup>

Appellant also alleged that she worked in a hostile environment and described a number of incidents that she perceived as harassment. She stated that she received hostile email messages. Upon a review of the messages, the Board finds that they represent reasonable communication with appellant. Mere perceptions of harassment or discrimination are not

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<sup>26</sup> *Michael L. Salvato*, 53 ECAB 666 (2002).

<sup>27</sup> *See Dennis J. Balogh*, *supra* note 11.

<sup>28</sup> *Michael L. Deas*, 53 ECAB 208 (2001).

<sup>29</sup> *Ronald Martinez*, 49 ECAB 326 (1998).

<sup>30</sup> *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>31</sup> *See Linda K. Cela*, 52 ECAB 288 (2001).

<sup>32</sup> *See Bonnie Goodman*, 50 ECAB 139 (1998).

compensable under the Act,<sup>33</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>34</sup> The Board finds that these allegations do not rise to a level to establish harassment, rather they constitute her perception and the evidence is insufficient to establish her claim for an employment-related emotional condition.<sup>35</sup>

Appellant has failed to establish a compensable employment factor. The Office properly denied her claim without addressing the medical evidence of record.<sup>36</sup>

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 31, 2004 be affirmed.

Issued: March 22, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>33</sup> *James E. Norris, supra* note 13.

<sup>34</sup> *Id.*

<sup>35</sup> *See Barbara J. Latham, supra* note 14.

<sup>36</sup> *Garry M. Carlo, 47 ECAB 299 (1996).*